No. 16521

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ELIZABETH B. JOHNSON,

Appellant,

vs.

CHARLES B. MACCOY,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Facts.

This action is brought under the provisions of the Federal Civil Rights Act, 42 U. S. C. A. Sec. 1983 (R3). It is alleged in appellant's complaint that the appellee, who was and is a duly qualified and acting judge of the Municipal Court of the Los Angeles Judicial District, acting as a magistrate, issued warrants for plaintiff's arrest [R. 4, 6]; that these warrants were issued after the filing of a complaint by a person or persons who were not public prosecutors [R. 5, 6]; that on one occasion appellant appeared in Division 4 of the Municipal Court in answer to one of the warrants of arrest [R. 4, 5]; and that appellant was for a time, on December 24, 1957, restrained of her liberty at the office of the Sheriff of Los Angeles County by the Sheriff acting pursuant to one of these warrants [R. 7]. Plaintiff further alleges that this latter restraint violated her rights under the Fourteenth Amendment of the United States Constitution to be free from all arbitrary and unreasonable physical restraints, to be free in the enjoyment of her facilities and to be free to earn a living by a lawful calling [R. 8].

POINT I.

The Federal Court Is Without Jurisdiction Under the Federal Civil Rights Act, Since Appellant's Complaint Does Not Allege Facts Showing That She Was Deprived of Any Rights, Privileges or Immunities Secured by the Constitution and Laws of the United States.

In 42 U. S. C. A. 1983, by which appellant contends the district court had jurisdiction of this action, it is provided:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to *the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,* shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (Emphasis ours.)

It is clear from reading this section that before there can be an action under this section there must be a deprivation of rights, privileges or immunities secured by the Constitution and laws of the United States.

Only rights or privileges granted, secured or protected by the Federal Constitution or laws of the United States can be made the basis of an action under the civil rights statutes.

Kenney v. Killian, 133 Fed. Supp. 571, 577; aff. 232 F. 2d 288;

Earle C. Anthony, Inc. v. Morrison, 83 Fed. Supp. 494, 495; aff. 173 F. 2d 897.

It is not intended by the Civil Rights Act that all matters formerly within the exclusive cognizance of states should become matters of national concern.

Snowden v. Hughes, 321 U. S. 1; 88 L. Ed. 497, 505.

Under the Civil Rights Act a cause of action arises only where a right created by the Federal Constitution or laws has been violated and violation of state laws is not sufficient.

Ortega v. Rogen, 216 F. 2d 561.

Invasions of purely personal rights the protection of which is within the domain of state powers does not come under the protective shield of general national sovereignty or of statutes such as civil rights statutes.

Hardyman v. Collins, 80 Fed. Supp. 501, 505.

Although the appellant has alleged that the acts of the appellee herein violated rights conferred upon her by the Fourteenth Amendment to the United States Constitution, said rights being the appellant's right to be free from all arbitrary and unreasonable physical restraints, to be free in the enjoyment of her facilities and to be free to earn a living by lawful calling [R. 3], the facts alleged show nothing more than that she was restrained of her liberty for a time on December 24, 1957, pursuant to a warrant issued by the defendant [R. 7]. Such an allegation at the most would amount to an allegation of false imprisonment, which may be redressed under the state law of California, and no facts appear which would give a court jurisdiction of this matter under the Federal Civil Rights Act.

In *Agnew v. City of Compton,* 239 F. 2d 226, plaintiff brought an action for damages under the Federal Civil Rights Act, alleging that defendants arrested him without a warrant and transported him to jail. It was further alleged that these acts were committed as a part of a conspiracy to deprive the plaintiff of numerous federal rights secured by the Constitution and federal statutes, including the rights to sell personal property, liberty of contract, equal protection of the law, due process of law, to work and earn a living, to live where one wills, personal liberty, peace and quiet, freedom of movement, privacy, and free speech.

In holding that no cause of action was stated under the Federal Civil Rights Act, 42 U. S. C. A. 1983, the court said at page 231:

> "Here, however, it is alleged that the arrest was spiteful, malicious, wrongful, and oppressive. This precludes the assumption that the officers proceeded under an honest misunderstanding of the ordinance. With these additional allegations, it would appear that the complaint states a common-law action for false arrest and imprisonment. It does not, however, state a cause of action under the Civil Rights Act, absent allegations that the purpose of the arrest was to discriminate between persons or classes of persons. Were the rule otherwise, every common-law action for false arrest would be cognizable in the federal courts under the Civil Rights Act.
>
> "But there is also to be considered the further allegation that such arrest was made for the purpose of denying plaintiff his rights, privileges, and immunities under the Constitution.

> "General allegations of this kind, when unsupported by the complaint, read as a whole, have consistently been rejected as insufficient. * * *."

The Court further said:

> "In what is said above, we do not mean to hold that a cause of action may never be stated where false arrest and imprisonment are involved. As before indicated, such a cause of action may be stated where it is alleged that the arrest was for the purpose of discriminating between persons or classes of persons. There is here no such allegation."

In the instant case there is no allegation in appellant's complaint that her arrest and detention was for the purpose of discriminating between persons or classes of persons.

II.

Appellant's Complaint Fails to State a Claim Upon Which Relief Can Be Granted.

A. A Judge Is Not Liable in a Civil Action Under the Federal Civil Rights Act for Acts Done by Him in the Exercise of His Judicial Functions.

The only acts alleged by the appellant to have been done by the appellee are the issuance of two warrants of arrest which are acts done in his capacity as a magistrate [R. 4, 5].

The law is well established in a great number of cases that a judge is not liable for damages for acts done in his judicial capacity in a matter over which the court has jurisdiction of the subject matter and parties although such an act was in excess of his jurisdiction or otherwise erroneous and that this rule of immunity has not been abrogated by the Civil Rights Act.

In *Bradley v. Fisher,* 80 U. S. 355, 20 L. Ed. 646, the United States Supreme Court stated at page 649 that where a judge performs a judicial act within the jurisdiction of the court, he cannot be subject to responsibility in a civil action however erroneous the act may have been and however injurious in its consequences it may have proved to the plaintiff. The Supreme Court further stated that it is a general principle of highest importance to the proper administration of justice that a judicial officer in exercising the authority vested in him shall be free to act without apprehension of personal consequence to himself.

Among the many cases which have stated the basic rule of judicial immunity are:

Carpenter v. Dethmers, 253 F. 2d 131;

Blackmon v. Wagener, 253 F. 2d 10 (cert. denied 78 Sup. Ct. 1390, 2 L. Ed. 2d 1554);

Spriggs v. Pioneer Carissa Gold Mines, Inc., 251 F. 2d 61;

Cuiksa v. City of Mansfield, 250 F. 2d 700;

Holmes v. Henderson, 249 F. 2d 529;

Ryan v. Scroggin, 245 F. 2d 54;

Watson v. Skillman, 242 F. 2d 659;

Skinner v. Nehrt, 242 F. 2d 573;

Peckam v. Scanlon, 241 F. 2d 761;

Thompson v. Hiether, 235 F. 2d 176;

Copley v. Sweet, 234 F. 2d 660;

Kenney v. Fox, 232 F. 2d 288;

Tate v. Arnold, 223 F. 2d 782;

Cawley v. Warren, 216 F. 2d 74;

Francis v. Crafts, 203 F. 2d 809;

Miller v. Middletown State Hospital, 164 Fed. Supp. 674;

Oppenheimer v. Stillwell, 132 Fed. Supp. 760;

Kenney v. Hatfield, 132 Fed. Supp. 814 (affirmed 232 F. 2d 288);

Peters v. Carson, 126 Fed. Supp. 137.

The rule in the State of California is the same as it is in the federal courts in this respect. In *Perry v. Meikle,* 102 Cal. App. 2d 602, the court stated at page 605 that judges of courts of record of superior or general jurisdiction are not liable in civil actions for their judicial act even when such actions are in excess of their jurisdiction and are alleged to have been done maliciously and corruptly.

It is clear that as a judge of the Municipal Court of Los Angeles Judicial District the appellee was a magistrate (Penal Code of the State of California, Sec. 808 (4)) and as a magistrate had jurisdiction to issue warrants of arrest when a complaint was filed with him charging a public offense triable in the Superior Court of the county in which he sits (Penal Code of the State of California, Sec. 813).

B. The Facts Alleged in Appellant's Complaint Do Not Set Forth a Basis for an Exception to the Basic Rule of Judicial Immunity.

The appellant bases her argument on a claimed exception to the rule of judicial immunity arising from the allegation that the appellee, sitting as a magistrate, issued a second warrant of arrest with knowledge that another judge of the municipal court had dismissed the proceedings against the appellant following the issuance of the first warrant of arrest by the appellee. (Op. Br.

p. 5.) This exception to the rule of judicial immunity, it is claimed, arises under the language of *Bradley v. Fisher, supra,* 80 U. S. 335, 20 L. Ed. 646, which holds that this rule of immunity is lost where there is a clear absence of all jurisdiction over the subject matter and the want of jurisdiction is known to the judge.

While it appears to be the appellant's basic contention that a magistrate is without jurisdiction to issue a warrant of arrest, or otherwise act following the filing of a complaint with him by a person other than a public prosecutor, she points to no statute, appellate court decision or other legal authority so providing. We have been unable to find any direct authority in point on this specific question. It, therefore, appears that this question has not yet been settled in California.

It is clear, however, that magistrates have general jurisdiction to issue warrants of arrest (Penal Code of the State of California, Sec. 813). In *Bradley v. Fisher, supra,* 80 U. S. 355, immediately following the language quoted and relied upon by the appellant in her brief, the court said:

> "* * * But where jurisdiction over the subject matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend. Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offenses, jurisdiction over the subject of offenses be-

ing entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority. But if, on the other hand, a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense, which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject matter is invoked. Indeed, some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the court held by him, or the manner in which the jurisdiction shall be exercised. And the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person, applies in cases of this kind, and for the same reasons."

When the complaints were presented to the appellee acting as a magistrate by the two private individuals in one instance [R. 5] and the single individual in the other instance [R. 6], his general jurisdiction over the subject matter was invoked. It then became his duty to decide

whether or not he had jurisdiction over the case in view of the fact that the complaints were filed by individuals and not by public prosecutors. The making of this decision was an act which the appellee had jurisdiction to perform and which he could not refuse to perform. In making this decision there was no pertinent statute or appellate court decision to assist him and it was, therefore, a question which the appellee must decide for himself. He decided that he had jurisdiction to issue the warrants for the appellant's arrest and to proceed with the case. Clearly this is not a case in which there was a clear absence of all jurisdiction over the subject matter and where the want of such jurisdiction was known to the judge.

It is contended that the prior dismissal of the matter by another judge of the municipal court was binding on Judge MacCoy as to his jurisdiction and deprived him of his judicial immunity if he should disagree with the views of Judge Hunt. We do not believe that it can be seriously contended that the decision in *Bradley v. Fisher* requires one judge of a municipal court to be bound by the views of another judge of the same court as to his jurisdiction as magistrate to issue a warrant of arrest in a particular case at the peril of personal financial liability in the absence of a statute or appellate court decision clearly in point. If the appellant were able to point to some clear and conclusive legal authority known to the appellee at the time he issued the warrants for her arrest and holding that he was without jurisdiction under the circumstances, there might be some basis to her contention. This she has not done.

In the absence of the allegation of any facts providing a legal basis for an exception to the rule of judicial im-

munity, the appellee, Judge MacCoy, enjoys such judicial immunity and the appellant's complaint fails to state a claim upon which relief can be granted.

Conclusion.

We submit that in this matter, appellant has not pleaded facts showing that she was deprived of any rights, privileges or immunities secured by the constitution and laws of the United States and therefore the Federal District Court was without jurisdiction of the matter.

Appellee, all of whose acts were done in his capacity as a magistrate has judicial immunity from civil liability under the Civil Rights Act as conclusively established by a long line of cases.

Appellant has not alleged facts showing that this was a matter in which appellee acted in the face of a clear absence of jurisdiction and when such absence of jurisdiction was known to him. In the absence of the allegation of such facts her complaint fails to state a claim upon which relief can be granted and the district court properly granted appellee's motion to dismiss the complaint.

The judgment of the District Court should be affirmed, with costs on appeal awarded to the appellee.

Respectfully submitted,

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